UNITED NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 798

Case No. 885: CLAXTON

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, First Vice-President, presiding; Mr. Hubert Thierry, Second Vice-President; Ms. Deborah Taylor Ashford;

Whereas, on 1 November 1995, Catherine Claxton, a staff member of the United Nations, filed an application containing, inter alia, the following pleas:

"... that the Tribunal find:

That the Secretary-General, in implementing the provisions of the Settlement Agreement, denied the Applicant due process in the determination of the proper category for the post JD NO3173, ...

that:

(i) Statements by the Applicant's former supervisors as to the proper category of the post were conclusive;

(ii) As a result, the duties of post JD NO3173, which were Professional in nature, should be classified in that category ...

To order:

(a) That the decision of the Secretary-General of 8 May 1995 to accept the recommendations of the ad hoc New York General Service Classification Appeals and Review Committee be rescinded; and

(b) That the post be classified at the appropriate level in the Professional category and the Applicant be promoted against it according to established rules and administrative instructions;

Or, failing the above, that:

(c) The case be remanded for a review that includes all components of due process, including the provisions of paras. 2 and 3 of the Settlement Agreement, as well as the applicable ICSC [International Civil Service Commission] policies and guidelines."

Whereas the Respondent filed his answer on 14 February 1996;

Whereas the Applicant filed written observations on 12 April 1996;

Whereas, on 6 August 1996, the Applicant filed an amendment to her pleas to include a request that the Tribunal order the production by the Respondent of certain documentation relating to the consideration of the classification of her post;

Whereas, on 18 September 1996, the Respondent submitted his comments on the Applicant's request, noting that this documentation was not properly discoverable;

Whereas, on 7 and 24 October 1996, the Applicant submitted comments on the Respondent's memorandum of 18 September 1996;

Whereas, on 4 November 1996, the Tribunal rejected the Applicant's request for production of further documents concerning her case;

Whereas, on 14 November 1996, the Tribunal put a question to the Respondent to which he provided an answer on 15 November 1996;

Whereas, on 14 November 1996, the Tribunal requested both the Applicant and the Respondent to provide it with written waivers of the confidentiality obligations under the Settlement Agreement of 22 December 1994 with respect to the classification issues in dispute;

Whereas, on 15 November and 18 November 1996, respectively, the Respondent and the Applicant filed such written waivers with the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 4 February 1974, on a three-month, fixed-term appointment as a Cashier at the G-2, step III level, in the Department of Public Information. Her appointment was extended for one year, through 3 May 1975 and then for one month, through 3 June 1975, when she separated from the Organization. The Applicant re-entered the service of the Organization on 19 July 1976, on a three-month, fixed-term appointment as a Bilingual Clerk at the G-3, step II level, in the Office of Personnel Services (OPS). On 19 October 1976, her appointment became probationary and, on 1 October 1977, permanent. On 1 April 1979, the Applicant was promoted to the G-4, step I level, as Senior Bilingual Clerk.

In July 1982, the International Civil Service Commission (ICSC) approved the establishment of a seven-level grading structure (to replace the former five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. In accordance therewith, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983. A description of the post encumbered by the Applicant was prepared for initial classification and submitted to the Classification Service. The Applicant signed administrative form P-270, certified by the Executive Officer, OPS, on 7 August 1984. The Applicant's post was initially classified at the G-6 level.

On 13 June 1984, the Assistant Secretary-General, OPS, announced to the staff, in ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being urdertaken in respect of

posts in the General Service and related categories in New York". On 23 December 1985, the Executive Officer, OPS, informed the Applicant that the Classification Review Group had, in accordance with ST/IC/84/45, classified her post as "Recruitment Assistant" at the G-7 level.

The Applicant's appeal against the categorization and classification of this post was considered by the Tribunal in its Judgement No. 560, Claxton (1992). The Tribunal held that the Applicant's appeals against the classification of her post were time-barred (cf. paragraph II). In any case, the Tribunal found that there were no "procedurally or prejudicial defective" actions taken by the Administration on her appeal against her classification (cf. paragraph III). Furthermore, the Tribunal found "no connection between allegations of sexual harassment made by the Applicant against a senior official of the Organization and either the post classification, the issue of time-bar, or any issue related to the inconsistency review".

The Secretary-General appointed Justice Mella Carroll of the High Court of Ireland to examine the allegations of sexual harassment. By memoranda dated 1 February 1994, the Secretary-General forwarded a copy of Justice Carroll's report on the allegations of sexual harassment, adding that the report was released on a confidential basis, with the finding, inter alia, that sexual harassment had been proved, and added:

> "3. I have taken note of the findings of Justice Carroll. In the light of these findings and in view of the resignation of [the Associate Administrator, UNDP] and of the Tribunal's earlier finding that there were no irregularities in the classification decisions you had appealed, I have decided that this matter now be closed."

On 4 February 1994, counsel for the Applicant wrote to the Secretary-General requesting an "urgent meeting" to discuss, inter alia, damages, counsel fees and costs to be awarded to the

Applicant, publication of Justice Carroll's findings and reapplication to the Tribunal in light of Justice Carroll's report.

In a reply dated 9 February from the Principal Legal Officer, General Legal Division, Office of Legal Affairs, the Secretary-General denied the payment of the Applicant's legal fees and costs and reaffirmed his decision to maintain the confidentiality of the report; he noted, however, that the Applicant could submit a copy of the report, on a confidential basis, to the Tribunal for purposes of any application she may make thereto. The Secretary-General also acknowledged the Applicant's right to apply directly to the Tribunal for review of the above decisions.

On 10 February 1994, the Applicant requested the Secretary-General to review the administrative decisions set forth in the memorandum of 9 February 1994. On 30 March 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 29 July 1994. It concluded that the Applicant had suffered a sexual assault and unanimously recommended awards of damages to compensate her both for this and for the conduct of the Administration following her allegations of sexual harassment; it also recommended the payment of the Applicant's attorney's fees and costs.

The Secretary-General took no decision on the JAB's recommendation but, instead, the parties entered into settlement negotiations. On 22 December 1994, the parties executed a Settlement Agreement, by which they settled "the matters that were in issue in Catherine Claxton's appeal to the Tribunal in respect of Report No. 1099 of the Joint Appeals Board, and in respect of the recommendations therein, dated 29 July, 1994". The Settlement Agreement also provided a mechanism for the classification of the Applicant's former post by the New York General Service Classification Appeals Review Committee, sitting as an ad hoc Committee for this purpose (hereinafter "the Committee").

As authorized by the Settlement Agreement, on 20 February 1995, the Applicant submitted a statement of appeal to the Committee. According to that Committee's Case Findings and Recommendations, the Applicant's statement of appeal was transmitted to the Compensation and Classification Service on 22 February 1995, which submitted its views on 15 March 1995. The Compensation and Classification Service concluded that "the duties and responsibilities of the Applicant's post are, ... appropriately classified in the General Service category". Those comments were transmitted to the Applicant on the same day and she submitted written observations on 30 March 1995.

The Committee's report discussed the submissions, and it made recommendations and findings, which read, in part, as follows:

> "The Committee referred, for [determining the classification of the post], to the ICSC methodology for distinguishing between Professional and Non-Professional posts and to the instructions for identifying the CCOG [Common Classification of Occupational Groups] code of the job.
>
> ...
>
> 13. The Committee concluded unanimously that while tasks 2 b) and h) of the revised job description contained elements which were Professional in nature, these were not, in and of themselves, sufficient to allocate the post to the Professional category, and that the post taken in its entirety was appropriately allocated in the General Service Category."

In a letter dated 8 May 1995, the Under-Secretary-General for Administration and Management informed the Applicant as follows:

> "I enclose a copy of the Case findings and recommendations of the New York General Service Classification Appeals and Review Committee (ad hoc) (hereafter 'the Committee') which had been established pursuant to Annex C of the Settlement Agreement to consider your appeal concerning the classification of your former post of Recruitment Assistant.

> The Committee unanimously concluded that 'the post taken in its entirety was appropriately located in the General Service category' ... and recommended '... that the post be maintained in the General Service category'.
>
> I have carefully examined the Committee's report and accept its reasoning and resultant recommendation that the classification of your former post of Recruitment Assistant at the GS-7 level in the General Service category was correct and consequently its classification at that level is maintained."

On 22 May 1995, the Applicant wrote to the Under-Secretary-General for Administration and Management requesting a copy of the Committee's minutes. In a letter dated 26 June 1995, the Under-Secretary-General for Administration and Management drew the attention of the Applicant to paragraph 10 of the Settlement Agreement as follows:

> "I draw to your attention that paragraph 10 of Annex C to the Settlement Agreement provides as follows:
>
> > '10. The Committee will submit, within 45 days of the receipt of [the Applicant's] observations on the Answer, its Report to ... [the Under-Secretary-General for Administration and Management], who will act on the report within twenty-one (21) days following submission thereof. If the recommendation of the Committee is rejected, the letter advising [the Applicant] of such rejection will contain a reasoned analysis setting out the basis of the rejection to enable [the Applicant] to appeal that decision directly to the Tribunal.'
>
> The ad hoc Committee delivered its Report on 27 April 1995 and I accepted that recommendation on 8 May 1995 and so informed you. The Settlement Agreement does not envisage further steps in relation to the classification review which is now closed.
>
> If you dispute this conclusion an attachment to the Settlement Agreement provides: 'In the event the Settlement Agreement gives rise to a dispute, pursuant to its terms, the UN agrees that such dispute may be submitted directly to the UNAT' (your memorandum of 22 December 1994 to [the Executive Secretary of the Administrative Tribunal])."

By a memorandum dated 10 July 1995 to the Secretary-General, the Applicant sought a review of this decision under staff rule 111.2(a). By a letter dated 3 August 1995, the Under-Secretary-General for Administration and Management replied to the Applicant as follows:

> "I have carefully reviewed my decision to accept the recommendation of the Committee and confirm my view that the Settlement Agreement requires that any further recourse that you wish to undertake in respect of my action to accept the recommendation of the Committee and treat this matter as final must be in accordance with the Settlement Agreement which established the Committee, the recommendation of which you seek to impugn.
>
> Your rights in this matter are defined by the terms of the Settlement Agreement which you signed after review by your outside counsel. The Settlement Agreement provides, both in paragraph 6 and in paragraph 10 of Annex C thereto, that your only avenue for appealing actions taken pursuant to the Settlement Agreement, or for resolution of disputes arising thereunder, is by direct submission of such dispute to the Administrative Tribunal. Accordingly, you may not appeal to the JAB. Moreover, any submission of an appeal to the JAB would contravene the confidentiality provision set forth in para. 8 of the Settlement Agreement. We expect that you will honour the clear terms of the Settlement Agreement with respect to both the appeals procedures envisaged thereunder and the confidentiality provisions thereof."

On 1 November 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. In implementing the Settlement Agreement, both the Committee and the Respondent committed procedural violations that denied the Applicant due process. Specifically, that Committee's report neither followed the ICSC's established procedural guidelines for classification of posts nor did it, in contravention of the terms of the Settlement Agreement, provide reasoned considerations for the Committee's recommendation that the Applicant's post remain

classified as a general service post. The Respondent, in accepting the Committee's findings, did not provide a reasoned analysis for the classification of the Applicant's post.

2. The statements provided by the Applicant's former supervisors interpreting the nature of the post at issue are by themselves conclusive as to the proper classification of that post.

Whereas the Respondent's principal contentions are:

1. The Settlement Agreement ended the dispute between the parties on a confidential basis. The only matter subject to adjudication is whether the Settlement Agreement has been implemented.

2. Article 2 and Annex C of the Settlement Agreement have been properly implemented. The recommendation and decision of the Committee are reasoned, its report reflects the submissions of the parties, its procedure accorded the parties due process and its recommendation was a valid exercise of discretion, in accordance with its terms of reference.

The Tribunal, having deliberated from 31 October to 21 November 1996, now pronounces the following judgement:

I. The issue before the Tribunal is whether the Respondent has fulfilled his obligations under the Settlement Agreement of 22 December 1994, between the Applicant and the Respondent. The Applicant initially advised the Tribunal, on 10 July 1995, that she intended to pursue her case before the Joint Appeals Board (JAB). On 3 August 1995, the Under-Secretary-General for Administration and Management advised the Applicant that:

> "The Settlement Agreement, signed by you after review by your outside counsel, provides, both in paragraph 6 and in paragraph 10 of Annex C thereto, that your only avenue for

> appealing actions taken pursuant to the Settlement Agreement, or for resolution of disputes arising thereunder, is by direct submission of such dispute to the Administrative Tribunal, not to the JAB."

The Applicant then filed her appeal with the Tribunal on 1 November 1995. The Applicant contends that direct submission to the Tribunal of a dispute over the agreement is a prerogative to be exercised by her if she wishes but that she is not precluded from appealing first to the JAB. The Tribunal disagrees with this assertion. Paragraph 6 of the Settlement Agreement clearly states that any dispute arising in connection with the agreement "shall, if she wishes to appeal, unless settled amicably by the parties hereto, be submitted by [the Applicant] directly to the United Nations Administrative Tribunal."

II. The dispute that has arisen between the parties to the Settlement Agreement relates to the proceedings instituted by the Applicant to appeal the classification of the post she held from 10 October 1977 to 18 October 1987 in the General Recruitment Section of the Office of Personnel Services. Annex C to the Settlement Agreement sets forth the procedures to be followed for the classification appeal, and Attachment I to the Settlement Agreement is the revised job description which was submitted by the Applicant to the New York General Service Classification Appeals and Review Committee (the Committee).

III. The Tribunal notes in regard to this aspect of the Applicant's claims, that it has previously ruled that review of the classification of the Applicant's post was time-barred. (Judgement 560, Claxton (1992)). However, by the terms of the Settlement Agreement entered into after Judgement No. 560 was rendered, the Applicant's right to have the post classification reviewed was established. In addressing the Applicant's claim

related to classification, the Tribunal notes that there were exceptional circumstances which led to the negotiation of a Settlement Agreement between the parties. The Tribunal finds that, as a consequence, a new procedural right to request a review has been created for the Applicant, who now invokes this right. This right is not affected by the doctrine of res judicata.

IV. Having considered the Applicant's appeal, the Committee issued its report on 27 April 1995. Its recommendation was that the post be maintained in the General Service category. This recommendation was accepted by the Under-Secretary-General for Administration and Management on 8 May 1995. It is this decision which the Applicant contests.

V. The Settlement Agreement provides in Annex C, paragraph 10 that "if the recommendation of the Committee is rejected, the letter advising [the Applicant] of such rejection will contain a reasoned analysis setting out the basis of the rejection to enable [the Applicant] to appeal that decision directly to the Tribunal." The Applicant is unhappy with the report of the Committee and claims that it does not provide a "reasoned analysis" of its recommendation.

VI. The Tribunal notes that the provision of the Settlement Agreement which requires that a "reasoned analysis" be set forth, no doubt contemplates circumstances other than those which prevailed, namely that the Under-Secretary-General would reject a recommendation from the Committee which was favourable to the Applicant. Nevertheless, it is clearly within the spirit of the Settlement Agreement that the Applicant should have the right to appeal an adverse decision on the basis of a reasoned explanation, and the Tribunal will interpret the agreement broadly in this respect.

VII. The Tribunal has, in this context, carefully reviewed the report of the Committee. Firstly, it finds that the Committee does provide a sufficiently reasoned analysis of its recommendation to give the Applicant an understanding of the thought process which led to the recommendation. The Committee examines methodically the course of its deliberations and the results of its examination of the various functions of the post in question. The duties of the post are specifically discussed in the report and the Committee concludes that certain tasks in the job description were professional in nature, but that these tasks "were not, in and of themselves, sufficient to allocate the post to the Professional category". The Tribunal finds that the Committee's report contains a reasoned analysis which satisfies the requirements of the Settlement Agreement.

VIII. For this reason, the Tribunal finds it is not necessary to look beyond the report of the Committee and has rejected the Applicant's request for the production of additional documents which are not required by the Settlement Agreement.

IX. The Applicant contends that the introduction by the Administration of a job description other than the one referred to in the Settlement Agreement violated that agreement and compromised the proceedings of the Committee. The Applicant's contention is based on her understanding that the Settlement Agreement provides that only the job description attached thereto could be submitted. The Tribunal does not agree. The Settlement Agreement states that the Applicant may submit to the Committee "the revised job description attached hereto as Attachment I together with a statement of appeal seeking its reclassification." Nowhere is it stated that this will be the only document to be taken into consideration by the Committee. The Tribunal finds that, while the purpose of this provision was to establish the revised job

description as the basis for the Committee's consideration, the provision does not preclude the Respondent from also submitting a previous job description as a point of reference. Instead, had the Committee chosen to disregard the revised job description, the Settlement Agreement would have been violated. The fact that the Committee was provided with the previous job description does not, in itself, violate the Settlement Agreement.

X. The Applicant acknowledges the jurisprudence of the Tribunal which establishes that it is not the function of the Tribunal to substitute its judgement for that of the Administration in job classification matters (Judgement No. 396, Waldegrave, (1987)). The Applicant states that she is not asking the Tribunal to determine whether the methodology established by the International Civil Service Commission (ICSC) was applied properly but "whether it has been applied at all". It is clear to the Tribunal that the ICSC methodology has been applied. The manner in which it has been applied is explained in the Committee's report. In fact, ICSC guidelines were used by the Committee to reject several arguments made by the Applicant. For example, the Applicant argues that her functions were performed before and after she encumbered the post in question by professional level staff members. The Committee's report notes that this consideration cannot be used as a basis for its examination in accordance with the job classification standards issued by ICSC. The Committee's report similarly rejects the Applicant's analysis of the post under the ICSC Master Standard on the grounds that job classification procedures require the category of the post to be determined first, before application of the Master Standard. The report makes repeated references to the ICSC methodology for distinguishing between professional and non-professional posts. In the light of all this evidence, the Tribunal finds that the Committee did apply the methodology established by the ICSC in considering the proper classification of the post.

XI. The Tribunal cannot substitute its judgement for that of the CARC. Having reviewed the Committee's proceedings and its report, the Tribunal finds that the process was fair and was carried out in accordance with the Settlement Agreement. There is no evidence that the process was tainted by prejudice or other extraneous factors.

XII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Luis de POSADAS MONTERO
First Vice-President, presiding

Hubert THIERRY
Second Vice-President

Deborah Taylor ASHFORD
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary